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# Supreme Court of the United States

October Term, 1959

No. **279 54**

CARL BRADEN,

*Petitioner,*

*against*

UNITED STATES OF AMERICA.

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## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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# Supreme Court of the United States

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## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

CARL BRADEN respectfully prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in the above entitled case on December 10, 1959, affirming petitioner's judgment of conviction in the United States District Court for the Northern District of Georgia.

### Opinions Below

The District Court wrote no opinion. The opinion of the Court of Appeals (R. 171) is reported at 272 F. 2d 653 and appears in Appendix A. *infra*, p. 22.

### Jurisdiction

The judgment of the Court of Appeals was entered on December 10, 1959 (R. 188, Appendix B, *infra*, p. 36). A petition for rehearing was denied on January 12, 1960 (R. 193). On February 2, 1960, Mr. Justice Black extended the time to file this petition to March 12, 1960. The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

## Questions Presented

1. Whether petitioner's refusal to answer certain questions of the House Committee on Un-American Activities (herein called the Committee), in explicit reliance upon this Court's decision in *Watkins v. United States*, 354 U. S. 178, constituted a violation of 2 U. S. C. § 192 and, if so, whether he was denied due process under the Fifth Amendment.

2. Whether the Committee was authorized by statute, rule or Constitution to subpoena and question petitioner

(i) in retaliation for his criticism of it,

(ii) to determine whether to "cite" certain organizations as "subversive",

(iii) because of his public opposition to legislative proposals favored by the Committee, and

(iv) to assess his motives in working for integration and civil rights.

3. Whether the questions set forth in the indictment were pertinent to the inquiry and whether the issue of pertinency should have been left to the jury.

4. Whether the Government sustained the burden imposed upon it by this Court in *Barenblatt v. United States*, 360 U. S. 109, and *Sweezy v. New Hampshire*, 354 U. S. 234, of showing why petitioner's right of privacy must yield to subordinating governmental interests.

5. Whether in the light of the Committee's total history, this Court should not reconsider its decision in *Barenblatt* and conclude that H. Res. 5, 85th Cong., violates the First Amendment.

6. Whether H. Res. 5, 85th Cong., meets the requirements of clarity for criminal statutes imposed by the due process clause.

7. Whether petitioner was properly convicted under 2 U. S. C. § 192 and the Federal Rules of Criminal Procedure, Rule 7, by reason of the insufficiency of the indictment, the inadequacy of the bill of particulars, and the absence of proof as to a Committee direction to testify.

### **Constitutional Provisions, Statutes and Rules Involved**

The constitutional provisions involved are Article I, Sections 1 and 9, clause 3; Article III, Section 1; and the First, Fifth, Sixth, Ninth and Tenth Amendments.

The statutes involved are 2 U. S. C. § 192 (52 Stat. 942), as amended, Public Law 601, Section 121, 79th Cong., 2d Sess. (60 Stat. 828) and the relevant portions of Rule XI of the Rules of the House of Representatives, H. Res. 5, 85th Cong., 1st Sess. Rule 7(c) and (f) of the Federal Rules of Criminal Procedure is also involved. These statutes and the Rule are reproduced in Appendix C, *infra*, p. 37.

### **Statement of the Case**

Petitioner Carl Braden is Field Secretary and Editor of the Southern Conference Educational Fund, Inc. (herein referred to as the Southern Conference) (R. 132). That organization's objective is to secure justice for the Negro people of the South in accordance with the requirements of the Fourteenth and Fifteenth Amendments and this Court's decisions in *Brown v. Board of Education*, 347 U. S. 483 and *Shelley v. Kraemer*, 334 U. S. 1 (*Ibid.*)

In 1954 petitioner was convicted of sedition in Kentucky as a direct result of helping a Negro family to purchase a house in a segregated suburb of Louisville. (See Emerson and Haber, *1 Political and Civil Rights in the United States* (2d Ed., 1958) 445-446.)

The House Committee supplied the State prosecuting attorney with advice and nine of his key witnesses. (See Transcript of Evidence filed as part of Record on Appeal in *Braden v. Commonwealth*, 291 S. W. 2d 843 [Kentucky C. A. 1956] pp. 43-157, 433-533, 547-768, 830-857, 866-889, 955-1009, 1019-1054, 1108-1133, 1138-1143, 1167-1200, 1210-1230, 1368, 1473-1474). The charges against petitioner and his wife were subsequently dismissed (*Braden v. Commonwealth*, *supra*) following this Court's decision in *Pennsylvania v. Nelson*, 350 U. S. 497.

In July 1958 the Committee subpoenaed petitioner and his wife while they and their two small children were vacationing in Rhode Island at the seashore home of Mr. Harvey O'Connor, a writer and National Chairman of the Emergency Civil Liberties Committee (herein referred to as ECLC) (R. 58-59, 135), a national organization concerned with the protection of civil liberties, particularly in the courts.<sup>1</sup>

The subpoena directed petitioner to appear in Atlanta, Georgia to testify at hearings conducted by the Committee. Petitioner duly appeared and identified himself and was examined by Committee counsel (R. 132-133).

The Committee inquired as to a meeting of the Southern Conference's Board of Directors in December 1957 in Atlanta, Georgia at the American Red Cross Building (R. 152, 158-159). There is no indication that anything untoward occurred at that meeting. Nevertheless, the Committee inquired:

"And did you participate in a meeting here at that time?" (Count 1; R. 154)

<sup>1</sup> Mr. O'Connor is a well known writer of such biographies as *Mellon's Millions* and books on the oil industry. ECLC, a non-political organization of scholars, lawyers and businessmen, has supported such litigation as *Abramowitz v. Brucker*, 355 U. S. 579 and *Kent & Biehl v. Dulles*, 357 U. S. 116.

"Who solicited the quarters to be made available to the Southern Conference Educational Fund?" (Count 2; R. 159)

The Committee then examined petitioner with respect to ECLC, apparently on the basis of his family's vacation in Rhode Island (R. 132). Petitioner is not and never has been connected with the ECLC although his wife is a member of its National Council.<sup>2</sup> Thus petitioner was asked:

"Are you connected with the Emergency Civil Liberties Committee?" (Count 3; R. 160)

and

"Did you and Harvey O'Connor in the course of your conference there in Rhode Island develop plans and strategies outlining work schedules for the Emergency Civil Liberties Committee?" (Count 4; R. 161)

The Committee severely criticized petitioner for a letter to the public opposing legislation which it supported. Thus, it produced a letter on the stationery of the Southern Conference signed by petitioner and his wife asking their fellow citizens—in the words of the Committee's counsel—

"to write their Senators and Congressmen to oppose S. 654, S. 2646 and H.R. 977, all of which are security measures pending in the United States Congress." (R. 71)

These bills were directed against this Court's decision in *Pennsylvania v. Nelson*, 350 U. S. 497 (*supra*, p. 4).

The Committee then inquired:

"Were you a member of the Communist Party the instant you affixed your signature to that letter?" (Count 5; R. 73)

<sup>2</sup> The Committee's publications show prior knowledge of ECLC's membership. See e.g. *Operation Abolition*, *infra*, note 8, *passim*.

It interrogated petitioner with respect to an open letter to Congressmen allegedly prepared by him and signed by two hundred prominent Southern Negroes<sup>3</sup> (R. 145-148). This letter requested the recipients:

"to use your influence to see that the House Committee on Un-American Activities stays out of the South—unless it can be persuaded to come to our region to help defend us against those subversives who oppose our Supreme Court, our Federal policy of civil rights for all, and our American ideals of equality and brotherhood." (R. 81, 148)

Finally, the Committee turned to the subject of the *Southern Newsletter*, a periodical not otherwise identified (R. 165):

"I would just like to ask you whether or not you, being a resident of Louisville, Kentucky, have anything to do there with the *Southern Newsletter*?" (Count 6; R. 7, 165).

Petitioner declined to answer the foregoing six questions because he believed that under this Court's decision in *Watkins v. United States*, 354 U. S. 178, the questions involved his rights under the First Amendment guarantees of freedom of association, belief and speech (R. 136, 139-142). He also questioned the Committee's jurisdiction and the pertinency of the questions, and he asserted his right of petition (R. 140). Except in connection with the first question (Count 1; R. 6, 154), the Committee made no determination as to the validity of objections and issued no direction to answer<sup>4</sup> (R. 139).

Petitioner was indicted on December 2, 1958 under 2 U. S. C. § 192 (R. 6). He pleaded not guilty (R. 11); his

<sup>3</sup> The date of petitioner's subpoena is the same as the date of that letter which was in circulation for signatures some time before it was filed (R. 81).

<sup>4</sup> The Court below was of the opinion that petitioner had waived the right to Committee consideration of each objection by an understanding that no direction would be required (R. 183-184; as to this, see *infra*, pp. 19-20).

motion to dismiss the indictment was denied (R. 8-9, 13). A bill of particulars described the subject matter of the investigation as follows:

"The extent, character and objects of Communist colonization and infiltration in the textile and other basic industries located in the South, Communist Party propaganda activities in the South, and entry and dissemination within the United States of foreign Communist Party propaganda." (R. 12)

The Government failed to give petitioner a bill of particulars as to "the manner in which each of the questions" set forth in the indictment "is alleged to be pertinent to the question under inquiry" (R. 10).

Petitioner was tried before a jury. His motion for judgment of acquittal was denied (R. 83-84). He excepted to the Court's charge and the jury returned a verdict of guilty upon all six counts (R. 6, 111-112).

Petitioner's motion in arrest of judgment was denied (R. 113). He was sentenced to twelve months upon each count, the execution of sentences to run concurrently (R. 114-115) and he was continued upon bond in the sum of \$1,000 (*ibid.*).

Subsequently, petitioner filed a motion for a new trial (R. 115-117) which was denied. He appealed to the Court of Appeals on March 18, 1959 raising all of the questions presented herein (R. 117-119). On December 10, 1959 the Court of Appeals affirmed the judgment of conviction (R. 188).

Petitioner filed a petition for rehearing by the Court *en banc* (R. 189-192) on December 29, 1959. The petition was denied on January 12, 1960 (R. 193). Subsequently the Court of Appeals entered orders staying issuance of the mandate pending certiorari (R. 198).<sup>5</sup>

<sup>5</sup> The order of January 18, 1960 (R. 198) stayed the mandate to February 11, 1960; a second order, on February 12, 1960, stayed it to March 19, 1960 and until the final disposition of the cause.

## Reasons for Granting the Writ

1. There is presented to this Court for the first time in its history the question of whether explicit and reasonable reliance upon a decision of the Court can constitute criminal contempt of Congress under 2 U. S. C. § 192.

When petitioner appeared before the House Committee on July 30, 1958 he expressly relied upon this Court's decision in the *Watkins* case rendered on June 17, 1957 (R. 141-142). In that case this Court emphasized the vagueness of the Committee's mandate, particularly as applied in criminal proceedings based upon inquiries into the exercise of the rights of speech, assembly and association (354 U. S. 178, 202, 203, 205).

Five members of this Court subscribed to the Chief Justice's opinion (354 U. S. at 216). Mr. Justice Frankfurter, concurring, questioned whether "the actual scope of the inquiry that the Committee was *authorized* to conduct and the relevance of the questions to that inquiry" were "luminous at the time when asked" (italics added), 354 U. S. at 217.

In the later case of *Barenblatt v. United States*, 360 U. S. 109, decided subsequent to petitioner's appearance before the Committee, a majority of the Court (with a different composition) decided otherwise, giving a narrower construction to the holding in *Watkins*. At least three members of the Court disagreed with this construction, 360 U. S. at 134.

Petitioner had no greater reason than this Court's minority to anticipate the *Barenblatt* decision. That he acted not unreasonably is apparent from the Chief Justice's opinion in *Watkins*, the dissenting opinion of Mr. Justice Black in *Barenblatt*, Judge Youngdahl's opinion in *United States v. Peck*, 154 F. Supp. 603 (D. D. C., 1957) and the vast literature on the subject. See e.g., Fleischmann, *Watkins v. United States and Congressional Power of Investigation*, 9 Hastings L. R. 157, and *Comments in*

71 Harvard L. R. 141, 56 Michigan L. R. 272, 24 U. of Chicago L. R. 740, 33 Temple L. Q. 108, 36 North Carolina L. R. 479.

Petitioner's reliance upon *Watkins* negated the criminal intent required by 2 U. S. C. § 192. That section "like the ordinary federal criminal statute requires a criminal intent—in this instance, a deliberate, intentional refusal to answer." *Quinn v. United States*, 349 U. S. 155, 165; see *Emspak v. United States*, 349 U. S. 190, 202; *United States v. Lamont*, 18 F. R. D. 27, aff'd 236 F. 2d 312.

The Court below sought to dispose of this point by citing *Sinclair v. United States*, 279 U. S. 263 (R. 184-185), involving reliance upon the advice of counsel, a notoriously thin reed. Analysis will show that *Sinclair* is inapplicable because it involved an admittedly clear congressional mandate.<sup>6</sup> Further, where First Amendment rights are involved this Court has recently imposed the very requirement of *scienter* or more, *mens rea*, which we urge here. *Smith v. People of the State of California*, — U. S. —, 80 S. Ct. 215.

Consistently since *Sinclair* this Court has shown greater sympathy for those who must, at their peril, pick their way through the tangled web of constitutional law. *United States v. Murdock*, 290 U. S. 389; *Screws v. United States*, 325 U. S. 91; and *Raley v. Ohio*, 360 U. S. 423. The decision below cannot be reconciled with the *raison d'être* of these three decisions, that failure to comply with a statutory criterion of conduct dependent upon an interpretation of constitutional law is criminal only if "done with a bad purpose." *United States v. Murdock*, 290 U. S.

<sup>6</sup> The cases cited in *Sinclair*, such as *Armour Packing Co. v. United States*, 209 U. S. 56 and *Standard Sanitary Mfg. Co. v. United States*, 226 U. S. 20 involved precise statutes qualitatively different from the congressional mandate here in issue.

at 394. To hold otherwise would distort the fair meaning of the statute, 2 U. S. C. § 192, and would deny due process to the petitioner.

2. Petitioner's conviction presents the important question as to whether the Committee is authorized by statute, rule or Constitution to subpoena a witness for clearly non-legislative purposes (*supra*, p. 2). We treat them separately since a combination of lawful and unlawful purposes would render the investigation invalid. Cf. *Remington Rand v. National Labor Relations Board*, 94 F. 2d 862, 872 (C. A. 2, 1938), *cert. den.* 304 U. S. 576.

(i) This case is part of a recently developing pattern of the Committee's use of its subpoena power to stifle its critics. Petitioner was examined concerning a petition to the Congress signed by "[t]wo hundred Negro leaders in the South" (R. 145) opposing its Atlanta hearings (R. 145)<sup>7</sup> and his association with the Chairman of the Emergency Civil Liberties Committee, an organization which has exchanged extensive criticism with the House Committee<sup>8</sup> (R. 33, 135-136, 160-161).

Another critic of the Committee, Frank Wilkinson, was subpoenaed solely because he had come to Atlanta to express his opposition to the Committee. *Wilkinson v. United States*, 272 F. 2d 783, *pet. pend.* Oct. Term 1959, No. 703. The Court below has held it proper for the Committee to subpoena one "engaged in aggressive opposition to the continued functioning of the Committee" (*Id.* at 787).

More recently the Committee subpoenaed Harvey O'Connor, ECLC's Chairman, because he was about to deliver a public speech critical of the Committee (Hearings House Committee on Un-American Activities, 85th Cong., 2d Sess. on *Communist Infiltration and Activities in Newark, N. J.* (1958), pp. 2757 *et seq.*) and indicted him for

<sup>7</sup> The full letter appears at R. 147-148.

<sup>8</sup> See e.g. the Committee's pamphlet entitled *Operation Abolition* (Nov. 8, 1957), an attack upon its critics.

fail to appear. *United States v. O'Connor* (D. N. J. Crim. No. 232-59). The Committee charged that Mr. O'Connor "intended nevertheless to discredit and to suggest a defiance of the Committee" (*Id.* at 2900) and that petitioner herein "had about the same things in mind, but he at least appeared" (*Ibid.*).<sup>9</sup>

*Lèse majesté* is not yet a substitute for legislative purpose. This is a far cry from this Court's decision in *McGrain v. Daugherty*, 273 U. S. 135, and from the reasoning in Dean Landis' landmark article, *Constitutional Limitations on the Congressional Power of Investigation*, 40 Harv. L. Rev. 153 (1926). Petitioner's case presents for the first time in this Court an issue critical to the democratic process—the extent to which Congress intended and the Constitution permits use of the power to subpoena and examine the sovereign people in retaliation for their expressed criticism of certain elected officials.

(ii) The second non-legislative purpose was to determine whether there was "sufficient quantity of information for the Committee to itself cite the Emergency Civil Liberties Committee" as a subversive organization (R. 49, 52). Even if "citation" were a governmental function under our Constitution (*Cf. Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U. S. 123; *Communist Party v. Subversive Activities Control Board*, Oct. Term 1959, No. 537), such a "direct condemnation by the legislature without any judicial action" [Chafee, *Three Human Rights in the Constitution* (1956) 93], is a bill of attainder completely outside the legislative process. See *Ex parte Garland*, 71 U. S. 333; *United States v. Lovett*, 328 U. S. 303.<sup>10</sup>

<sup>9</sup> These quotations are also to be found in the Committee's unnumbered mimeographed report recommending Mr. O'Connor's contempt citation.

<sup>10</sup> *Cf. Methodist Federation of Social Action v. Eastland*, 141 F. Supp. 729, where the majority of a statutory court declined to decide the bill of attainder issue because the remedy sought was an injunction against the Government; see particularly the scholarly dissenting opinion of Judge Wilkins, 141 F. Supp. at 732.

(iii) The Committee claims the right of testimonial compulsion to investigate "political pressure, or attempted political pressure, on the United States Congress with respect to security measures pending in the Congress". (R. 70). This is a gross distortion of the constitutional relationship between the citizen and the State. "Un-American propaganda activities", H. Res. 5, 85th Cong., 1st Sess., are quite different from such "attempted political pressure"; see *United States v. Josephson*, 165 F. 2d 82, 87-88, *cert. den.* 333 U. S. 838, *reh. den.* 333 U. S. 858). The first judicial support of this broad Committee power is found in this and the *Wilkinson* cases. Indeed the Court below so clearly regarded petitioner's opposition to pending legislation as a justification for the retaliatory subpoena that it reproduced the entire letter of opposition in the opinion, *infra*, Appendix A, pp. 26-27). This case thus presents for the first time in this Court since *United States v. Rumely*, 345 U. S. 41, and far more sharply and unavoidably, the important issue of whether the Congress intended and the Constitution permits this punitive use of the power to subpoena and cross-examine private citizens.

To read the House Committee's mandate so broadly would "violate the freedoms guaranteed by the First Amendment—freedom to speak, publish and petition the Government," *United States v. Harriss*, 347 U. S. 612, 625. The decision below is, in this respect, in conflict in principle with the *Harriss*, *Josephson* and *Rumely* cases.

(iv) The Committee's extraordinary claim of power to investigate petitioner's *motives* in supporting integration and civil rights (R. 136, 150, 156, 179) would establish an equally pernicious limitation upon the right of citizens to associate, petition and speak. The Court below agreed that the Committee could investigate "whether organizations

ostensibly active in championing timely objectives, such as integration and civil rights, are in fact being used for the spread of the propaganda of a foreign dominated Communist organization with subversive designs upon our governmental system" (R. 179).

Increasingly, since *Brown v. Board of Education*, *supra*, governmental bodies have attempted such censorship in the guise of registration laws and legislative investigations. See *Shelton v. McKinley*, Oct. Term 1959, No. 541; *National Assn. for the Advancement of Colored People v. Alabama*, 357 U. S. 449; *Scull v. Virginia*, 359 U. S. 344; *Bates v. City of Little Rock*, Oct. Term 1959, No. 41, 28 L. W. 4101; Public Hearings of the State of Louisiana Joint Legislative Committee, *Subversion in Racial Unrest*, March 6-9, 1957.<sup>11</sup> The decision below would accomplish this very result. It is also in conflict in principle with this Court's decision in *De Jonge v. Oregon*, 299 U. S. 353, protecting the exercise of constitutional rights regardless of challenged auspices.

3. The decision below raises two important questions concerning the meaning and enforcement of the pertinency requirement of 2 U. S. C. § 192.

(a) There was no claim that petitioner was connected with, or that any question related to "colonization and infiltration" in basic industries or to the entry of "foreign Communist Party propaganda" (R. 12). Accordingly, the Government was required to prove pertinency to the remaining item in the bill of particulars, "Communist Party propaganda activities in the South" (*ibid.*).

*Petitioner was not asked a single question on the subject.* The petition to Congress in opposition to the Committee (R. 79-81) and the letter to the public in opposition to pending legislation (R. 71-72) cannot be described rationally as "Communist Party propaganda activities." In-

<sup>11</sup> Other relevant material is documented in *Scull v. Virginia*, *supra*, Petitioner's Brief, pp. 41-75.

deed, there is no evidence whatsoever of Communist propaganda activities by the Southern Conference or the ECLC. The distinguished sponsorship and the creditable work of the two organizations working respectively for civil rights and civil liberties are a matter of public record. The Government was silent as to the nature of the Southern News Letter although it appears to be a journal of opinion favorable to integration (R. 165). Constitutional rights cannot be lost because of the unsupported opinion of Committee counsel which the Court below evidently accepted as evidence (see *e.g.* R. 179-180).

In contrast to *Barenblatt*, there was no investigation here into Communist Party membership or testimony as to the nature of the Communist Party or as to petitioner's connections with it. While reserving our objections, *infra*, pp. 16-18, to the *Barenblatt* doctrine, it is clear that it does not establish pertinency in situations like the instant one. The one question relating to the Communist Party—*i.e.* membership at the time of signing a public letter opposing pending legislation—was not pertinent if *De Jonge v. Oregon*, *supra*, is still the law. Petitioner's situation is akin to that of Professor Sweezy where the claim of Communist infiltration into the Progressive Party was held not to justify the inquiry into recognizedly lawful activities. *Sweezy v. New Hampshire*, 354 U. S. 234.

(b) The Court below approved the trial court's charge to the jury that the evidence established the element of pertinency (R. 103, 179-180). Under the Sixth Amendment, pertinency, like every element of a crime, is a matter for determination by the jury. Such was the holding of the Third Circuit in *United States v. Orman*, 207 F. 2d 148, 156, where, as here, "evidence *aliunde* was introduced to prove pertinency." This Court's decision in *Sinclair v. United States*, *supra*, was correctly distinguished in *Orman* as not involving the weight of evidence. The conflict between the Third and Fifth Circuits on this point should be

resolved by this Court in view of the large number of pending contempt cases and this Court's ultimate responsibility for the uniform administration of federal criminal law. If *Sinclair* were deemed applicable to petitioner, reconsideration is required in view of the Sixth Amendment.

4. In *Barenblatt* this Court assumed the difficult function of balancing "the competing private and public interest at stake" (360 U. S. at 126) in the kind of investigation involved herein. If that balancing doctrine is to remain (see *infra*, p. 16), a scrutiny of the record will show here, as in *Sweezy v. New Hampshire*, *supra*, that the questioning "was too far removed from the premises on which the constitutionality of the State's investigation had to depend" to withstand attack under the First Amendment. See *Barenblatt v. United States*, 360 U. S. 109, 129. The Southern Conference, ECLC and the Southern Newsletter are entitled to the same protection which this Court in *Sweezy* gave to the Progressive Party. Public communications with the electorate (R. 71) or Congressmen (R. 147, 148) are not a legitimate basis for investigation of the writers, unless the constitutional right of petition is to be drastically circumscribed.

In *Barenblatt* this Court upheld an inquiry into "his participation in or knowledge of alleged Communist Party activities at educational institutions," 360 U. S. at 115. The Court passed only on the propriety of questions relating to Barenblatt's alleged membership in the Communist Party. In *Barenblatt*, this Court recited prior testimony as to the nature of the Communist Party and his alleged participation in its activities, 360 U. S. at 114. It concluded that "petitioner's appearance as a witness [did not] follow from indiscriminate dragnet procedures lacking in probable cause for belief that he possessed information which might be helpful to the Subcommittee," 360 U. S. at 134. *In the instant case no such evidence was presented at the Committee hearing or the trial below.* Accordingly, novel questions

of considerable importance are presented as to (i) the scope of the Congressional investigating function, (ii) the citizen's right of privacy and (iii) the nature and extent of the "probable cause" required in cases of this type. *Cf. Henry v. United States*, 361 U. S. 98.

5. In *Barenblatt* this Court held that the Committee's mandate did not violate the First Amendment. Petitioner is prepared to show what was only attempted *en passant* in *Barenblatt* and *Watkins*, that the Committee's mandate, as applied since its creation, has violated the First Amendment and has been used for exposure rather than for legislation. This showing would include the following:

(a) An infinitesimal number of bills are referred to, considered by and reported by this Committee.<sup>12</sup> Virtually all the legislative work for which the Committee claims credit is the product of the Judiciary and the Foreign Affairs Committees.<sup>13</sup>

(b) This Committee conducts hearings on subjects clearly within the jurisdiction of other committees, even where such committees have already held hearings. *Cf. Hearings on H.R. 9991 (Passports, Denial and Review)* 84th Cong. conducted by the Judiciary Committee on May 10 and

12.

Bills referred to House Committee on Un-American Activities	Total Number of Bills Referred to House Committees
83rd Cong. 1st Sess.	5471
83rd Cong. 2nd Sess.	4814
84th Cong. 1st Sess.	6580
84th Cong. 2nd Sess.	5876
85th Cong. 1st Sess.	9599
85th Cong. 2nd Sess.	3922

Source: Library of Congress, Legislative Reference Service. Digest of Public General Bills, Final Issues for 1953, 1954, 1955, 1956, 1957 and 1958.

<sup>13</sup> See the Brief of *amici curiae* Davis, et al. submitted in support of petition for rehearing in *Barenblatt v. United States*, O. T. 1958, No. 35. This Court's acceptance of the Committee's claims *Barenblatt v. United States*, 360 U. S. 109, 127, is not justified by the facts.

28, 1956 and Hearings on *Passports* conducted by this Committee from May 23 to June 23, 1956. A reading of the two sets of hearings show that this Committee's function is to expose whereas the legislative work is done by the other committees.

(c) The hearings conducted by this Committee purport to investigate Communist activities on the theory that they involve threats to national security. *United States v. Josephson*, 165 F. 2d 82, 87-88, *cert. den.* 333 U. S. 838, *reh. den.* 333 U. S. 858. Nevertheless, the following is invariably the pattern of Committee testimony:

(i) The Committee's interest is in names rather than activities. It will sometimes call the same witness several times; it may even call witnesses who had previously testified before other committees. An examination of the Committee's hearings and reports into such subjects as education, and the arts and, in the instant case, into integration, has yet to reveal anything like an "investigation of advocacy of or preparation for overthrow"; *Barenblatt v. United States*, *supra*, at 130.

(ii) The Committee's witnesses are not called to supply information but to corroborate prior testimony as to their Communist Party membership. The inquiries frequently relate to matters remote in time which are quite meaningless in terms of current legislative problems.

(iii) It is common knowledge that Communist Party membership and prestige are at their lowest ebb. Stouffer, *Communism, Conformity and Civil Liberties* (1955); Draper, *Roots of American Communism* (1957); Shannon, *Decline of American Communism* (1957); Ginzberg, *Rededication to Freedom* (1959). The public revelation of one-time Communists, invariably known to the Federal Bureau of Investigation as well as to the Committee, is not a legislative function. In contrast, the variety and scope of existing legislative sanctions against so-called subversive activity are, of course, unparallel in our history.

(iv) The principal function of the Committee, ironically, is in the field of propaganda. It has the largest committee staff and appropriations. It prints more copies of its hearings and reports than all the other committees together.<sup>14</sup> These reports customarily have nothing to do with legislation but consist of diatribes against organizations and persons of whom the Committee disapproves. It publishes, in the hundreds of thousands, copies of such documents as *Spotlight on Spies* (250,000), *Ideological Fallacies of Communism* (36,000) and *The Crimes of Khrushchev*. Only recently it supported the scandalous charge that Communists had infiltrated the Protestant Churches, *I. F. Stone's Weekly*, March 7, 1960, p. 2.

Of course, no single item of the foregoing establishes the proposition urged herein. But cumulatively the data now available does establish that the role of the Committee from its beginnings has been that of exposure rather than of recommending legislation. See Mr. Justice Brennan's dissenting opinion in *Barenblatt v. United States*, 360 U. S. 109, 130.

<sup>14</sup> The basic Committee appropriation has risen from \$125,000 for the 79th Congress to \$654,000 for the 86th Congress. In addition it secured special permission to print its publications in unusually large amounts, e.g.:

Cong.	Year	Amount	Publication
81:1	1949	250,000	100 Things You Should Know About Communism in the U.S.A.
82:1	1951	500,000	1000 Things You Should Know About Communism
	1954	35,000	Guide to Subversive Organizations and Publications
85:1	1957	60,000	Guide to Subversive Organizations and Publications

In contrast to a total absence of special printing authorizations for the important Judiciary and Foreign Affairs Committees, the House Committee has secured such authorizations as 1,500,000 copies (81st Cong., 1st Sess.), 565,000 (82nd Cong., 1st Sess.) and 78,500 (86th Cong., 1st Sess.).

6. In *Barenblatt*, this Court relied upon extensive legislative history to determine the scope of the authority given by Congress to the Committee. In that case this Court was not asked to resolve the more difficult issue of whether H. Res. 5, treated as a criminal statute, was sufficiently clear to the witness to avoid violation of the Fifth and Sixth Amendments. The legislative gloss relied upon by this Court in *Barenblatt* to determine the scope of Committee authority may not be used to impute *scienter* to the witness. A criminal statute must be clear "on its face." *Lanzetta v. New Jersey*, 306 U. S. 451, 453, 458, and cases cited.

We know of no criminal case in which this Court held that a statute obscure on its face was a sufficient guide to a defendant's conduct because of legislative reports and other history known in fact only to the Congress and students of its operations. The decision below thus presents to this Court a conflict with the principle established in *Lanzetta v. New Jersey*, 306 U. S. 451 and *Winters v. New York*, 333 U. S. 507 and is thus entitled to review.

7. Finally, this case presents three important recurring problems in prosecutions under 2 U. S. C. § 192:

(a) A witness before a Congressional committee may not be found in contempt in the absence of an unequivocal direction by the Committee chairman after the witness has raised his objections. *Watkins v. United States*, 354 U. S. 178; *Flaxer v. United States*, 358 U. S. 147; see *Scull v. Virginia*, 359 U. S. 344.

The record does not reveal that such a direction was made in the instant case except possibly with respect to Count One, which is defective on pertinency and other grounds (*supra*, pp. 13-14).

While petitioner assumed that his objections would be overruled (R. 155), he had statutory and constitutional rights to the Committee's adjudication and direction, and

a waiver of such rights is not to be lightly inferred. *Smith v. United States*, 337 U. S. 137, 150. A witness may not assume that the Committee would capriciously insist upon an answer regardless of his asserted reasons for refusal, particularly where substantial constitutional rights and penal sanctions are involved. In holding the contrary, the decision below is again in conflict with the Court of Appeals for the Third Circuit, which expressly held that "a defendant cannot be held to have waived his objections to the pertinency of an investigating committee's inquiries." *United States v. Orman*, 207 F. 2d 148, 154.

Thus, petitioner was "never confronted with a clearcut choice \* \* \* between answering the question and risking prosecution for contempt." *Emspak v. United States*, 349 U. S. 190, 202. See also *Bart v. United States*, 349 U. S. 219, 221; Mr. Justice Reed dissenting in *Quinn v. United States*, 349 U. S. 155, at p. 185.

(b) The indictment—as with the subpoena (R. 6-7)—failed to state the subject matter under investigation, an element of the crime charged. Nor did it charge that the failure to answer questions was willful. This is most significant even if *willful* does not involve a *mens rea* as suggested, in the first question presented, *supra* pp. 8-10. In any event, the decision below is in conflict on this point with the leading decision of Judge Weinfeld in the Second Circuit, *United States v. Lamont*, 18 F. R. D. 27, *aff'd* 236 F. 2d 312, and the conflict should be resolved by this Court.

(c) The third question is whether petitioner was entitled to the dismissal of the indictment—or to an appropriate bill of particulars—where the indictment failed to show how the questions recited in the six counts were pertinent to the subject allegedly under investigation. Such a bill has been directed where, as here, pertinence was not manifest, *United States v. Dunham*, D. D. C. Crim. No. 1148-54 (unreported). Its absence here raises a substantial question under Rule 7, Fed. Rules Crim. Proc., under the due

process clause of the Fifth Amendment and under the Sixth Amendment's guarantee of his right "to be informed of the nature and cause of the accusation."

### CONCLUSION

**For the foregoing reasons, the petition for a writ of certiorari should be granted.**

Respectfully submitted,

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**Appendix A**  
 IN THE  
 UNITED STATES COURT OF APPEALS  
 FOR THE FIFTH CIRCUIT  
 No. 17705

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CARL BRADEN,  
 Appellant,  
*versus*

UNITED STATES OF AMERICA,  
 Appellee.

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APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE  
 NORTHERN DISTRICT OF GEORGIA.

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(December 10, 1959.)

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Before HUTCHESON, CAMERON and JONES, Circuit Judges.

JONES, Circuit Judge: The appellant, Carl Braden, was convicted of each of the six counts of an indictment charging contempt of Congress under 2 U. S. C. A. § 192,<sup>1</sup>

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<sup>1</sup> "Every person who having been summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry before either House, or any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or any committee of either House of Congress, willfully makes default, or who, having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than \$1,000 nor less than \$100 and imprisonment in a common jail for not less than one month nor more than twelve months."

arising from his refusal to answer certain questions at a hearing of a Subcommittee of the Committee on Un-American Activities of the House of Representatives. He has appealed from the conviction.

Complying with a subpoena, the appellant appeared before the Subcommittee in Atlanta, Georgia. He was accompanied by two attorneys. After being sworn the appellant identified himself as Field Secretary of the Southern Conference Fund, Inc., which, he said, was "a southwide interracial organization working to bring about integration, justice and decency in the South." He was also the associate editor of the Southern Patriot, a newspaper published by the Southern Conference Educational Fund which, said the appellant, "disseminates information on integration in the South and about the people who are working for integration." The appellant testified that the subpoena of the Committee had been served on him while he was visiting in Rhode Island. In reply to a question of counsel for the Committee, he stated that he was visiting Harvey O'Connor, National Chairman of the Emergency Civil Liberties Committee. He was asked to state the point from which he departed to the State of Rhode Island. The appellant expressed the belief that the question was not pertinent to any question that the Committee might be investigating, and that the question was an invasion of his right to associate under the First Amendment. He declined to answer. The Committee counsel gave the appellant an explanation of the pertinency of the question, saying:

"Sir, it is our understanding that you are now a Communist, a member of the Communist Party; that you have been identified by reputable, responsible witnesses under oath as a Communist, part of the Communist Party which is a tentacle of the international Communist conspiracy. It is our information further, sir, that you as a Com-

munist have been propagating the Communist activity and the Communist line principally in the South; that you have been masquerading behind a facade of humanitarianism; that you have been masquerading behind a facade of emotional appeal to certain segments of our society; that your purpose, objective, your activities, are designed to further the cause of the international Communist conspiracy in the United States.

"Now, there is pending before the Committee on Un-American Activities pursuant to its authority, its duty, and its responsibility legislation. Indeed, the chairman of the Committee on Un-American Activity sometime ago introduced a bill, H.R.9937, which has numerous provisions which are being considered by the Committee on Un-American Activities. Some of these provisions undertake to tighten the security laws respecting the registration of communists; some of these provisions undertake to tighten the security laws respecting the dissemination of communist propaganda. Some of these security laws preclude certain types of activities, the very nature of which we understand you have been engaged in.

"In addition to that, sir, there is pending before the Committee on Un-American Activities a series of proposals that are not yet incorporated into legislative form, which the committee is considering. In addition to that, the Committee on Un-American Activities has a mandate from the Congress of the United States to maintain a surveillance over the administration and operation of numerous security laws that are presently on the statute books, including the Internal Security Act, the Communist Control Act of 1954, the Foreign Agents Registration Act, espionage and sabotage statutes.

"It is for that reason and for these reasons which I have just described to you that this committee has come to Atlanta, Georgia, for the purpose of assembling factual material which the committee can use, in connection with other material which it has assembled, in appraising the administration and operation of the laws, and in making a studied judgment upon whether or not the current provisions of the laws are adequate and whether or not each or any of these proposals pending before the committee should be recommended for enactment.

"If you, sir, now will tell us, in response to the last outstanding principal question, where you have been immediately prior to your sojourn in Rhode Island with Harvey O'Connor, who has been identified as a hard-core member of the communist conspiracy, head of the Emergency Civil Liberties Committee, another organization that has been cited by a Congressional Committee as a communist front."

The Chairman of the Subcommittee ruled that a foundation had been laid establishing the pertinency of the question and directed the appellant to answer. The appellant again refused to answer stating that his beliefs and his associations were none of the business of the Committee and asserting that his refusal to answer was "on the grounds of the first amendment to the United States Constitution, which protects the rights of all citizens to practice beliefs and associations, freedom of the press, freedom of religion, and freedom of assembly." He declined to answer many other questions upon the same grounds; adding as an additional ground a claim that the mandate of the Committee was so vague that the subjects it was authorized to investigate could not be determined. The appellant was asked if he was in the Atlanta area

in December of 1957, and he gave an affirmative answer. He was then asked, "And did you participate in a meeting here, at that time?" He refused to answer and the refusal is charged as an offense by Count One of the indictment. After the appellant had testified that it was a matter of public record that the Southern Conference Educational Fund met in the American Red Cross Building in Atlanta in December, 1957, he was asked, "Who solicited the quarters to be made available to the Southern Conference Educational Fund?" The refusal to answer this question forms the basis of Count Two of the indictment.

Committee Counsel asked the appellant, "Now sir, are you connected with the Emergency Civil Liberties Committee?" He declined to answer and this question is the subject matter of Count Three. He was asked, "Did you and Harvey O'Connor, in the course of your conferences there in Rhode Island, develop plans and strategies outlining work schedules for the Emergency Civil Liberties Committee?" The appellant's refusal to answer this question resulted in Count Four of the indictment.

The appellant was shown a letter<sup>2</sup> on the letterhead of Southern Conference Educational Fund. He admitted

"Dear Friend:

"We are writing to you because of your interest in the Kentucky sedition cases, which were thrown out of Court on the basis of a Supreme Court decision declaring state sedition laws inoperative.

"There are now pending in both houses of Congress bills that would nullify this decision. We understand there is a real danger that these bills will pass.

"We are especially concerned about this because we know from our own experience how such laws can be used against people working to bring about integration in the South. Most of these state statutes are broad and loosely worded, and to the officials of many of our Southern states integration is sedition. You can imagine what may happen if every little local prosecutor in the South is turned loose with a state sedition law.

that it bore the signatures of his wife and himself. He was asked, "Were you a member of the Communist Party the instant you affixed your signature to that letter?" The refusal to answer this question is the charge of Count Five.

Counsel for the Committee stated to the appellant:

"Eugene Feldman—who lives in Chicago, Illinois. He is the editor of the Southern News-letter. We had him before the Committee yesterday, at which time we displayed to him the application for a post office box made on behalf of the Southern Newsletter, a publication which is developed in Chicago, which is sent to a post office box in Louisville, Kentucky, and then mailed out over the South."

After this statement the appellant was asked, "I would just like to ask you whether or not you, being a resident of Louisville, Kentucky, have anything to do with the Southern News Letter?" The appellant refused to answer this question on the ground that it was an attempted invasion of the freedom of the press as well as the grounds

"It is small comfort to realize that such cases would probably eventually be thrown out by the Supreme Court. Before such a case reaches the Supreme Court, the human being involved have spent several years of their lives fighting off the attack, their time and talents have been diverted from the positive struggle for integration, and money needed for that struggle has been spent in a defensive battle.

"It should also be pointed out that these bills to validate state sedition laws are only a part of a sweeping attack on the U. S. Supreme Court. The real and ultimate target is the Court decisions outlawing segregation. Won't you write your senators and your congressman asking them to oppose S. 654, S. 2646, and H.R. 977. Also ask them to stand firm against all efforts to curb the Supreme Court. It is important that you write—and get others to write—immediately, as the bills may come up at any time.

"Cordially yours,

"CARL and ANNE BRADEN."

assigned for the refusal to answer the other questions. This refusal to answer is the basis for the charge contained in Count Six.

The appellant moved to dismiss the indictment which motion was overruled and denied. The appellant also filed a motion for a bill of particulars in which the request was made that the Government

"1. State the question under inquiry as to which each of the questions set forth in Counts One through Six is alleged to be pertinent.

"2. State the manner in which each of the questions set forth in Counts One through Six is alleged to be pertinent to the question under inquiry referred to in item 1 above."

There was apparently no order entered on the motion for a bill of particulars. The Government, however, filed a Bill of Particulars as to the information sought, in Request Number 1 of the motion in these words:

"The question under inquiry by the Subcommittee of the House Committee on Un-American Activities, on July 30, 1958, as alleged in the indictment, as to which each of the questions set out in Counts 1 through 6 of this indictment is alleged to be pertinent, was:

"The extent, character and objects of Communist colonization and infiltration in the textile and other basic industries located in the South, Communist Party propaganda activities in the South, and entry and dissemination within the United States of foreign Communist Party propaganda."

No objection was made as to the sufficiency of the bill of particulars as a response to the first request nor was the court asked to require the Government to respond to the second request contained in the motion.

Following the verdict of guilty upon each of the six counts, concurrent sentences of twelve months imprisonment on each of the counts were imposed. Motions in arrest of judgment and for a new trial were made and denied.

The assertion is made on behalf of the appellant that he was not called before the Committee for any legislative purpose but rather for the purpose of harassing and exposing him because of his support of integration and civil rights and his opposition to the Committee and to pending legislation. Investigations can be made by the Congress only as to matters which are proper subjects for legislation by it. There is no congressional power to expose for the sake of exposure. *Watkins v. United States*, 354 U. S. 178, 77 S. Ct. 1173, 1 L. Ed. 2d 1273; *Barenblatt v. United States*, 360 U. S. 109, 79 S. Ct. 1081, 3 L. Ed. 2d 1115. The opening statement of the Committee Chairman showed a purpose of investigating current subversive Communist techniques in the South. Legislative purposes might well be furthered by a determination of whether organizations ostensibly active in championing timely objectives, such as integration and civil rights, are in fact being used for the spread of the propaganda of a foreign dominated Communist organization with subversive designs upon our governmental system. If a Congressional Committee ascertained that Communists were attempting to create an appearance of respectability for Un-American activities by seeking the shelter of such an honored and honorable institution as the American Red Cross, that fact would be pertinent to the inquiry it was making.

There was a close relationship shown between the appellant and Harvey O'Connor, who was known to the Committee as a hard-core member of the Communist Party. O'Connor was identified as the National Chairman of the Emergency Civil Liberties Committee which was stated to be a Communist front organization. The activities of that organization, with which the appellant would have

been familiar if he was associated with O'Connor in the development for it of plans and strategies, were pertinent to the investigation being made by the Committee.

We need not make any analysis of the pertinency of the questions upon which other counts of the indictment were based. The sustaining of the appellant's conviction on any of the counts would require an affirmance since concurrent sentences were imposed. *Barenblatt v. United States*, *supra*; *Davis v. United States*, 6th Cir. 1959, 269 F. 2d 357; *Estep v. United States*, 5th Cir. 1955, 223 F. 2d 19, cert. den. 350 U. S. 862, 76 S. Ct. 105, 100 L. Ed. 765; *Gilmore v. United States*, 5th Cir. 1955, 228 F. 2d 121; *Morales v. United States*, 5th Cir. 1956, 228 F. 2d 762.

While before the Committee, the appellant's refusals to answer were frequently accompanied by statements or suggestions that the Committee's purpose was the investigation of integration. But one who is known or believed to be a Communist and is suspected of being engaged in Un-American activities does not acquire immunity by adopting the role of a racial integrationist.

During the appearance of the appellant before the Committee he stated his claim of right in refusing to answer the Committee's questions by saying, "I am standing on the *Watkins*,<sup>3</sup> *Sweezy*,<sup>4</sup> *Koenigsberg*,<sup>5</sup> and other decisions of the Supreme Court which protect my right, and the Constitution as they interpret the Constitution of the United States to private belief and association." Again he said, "I also believe it is an invasion of my right to associate under the first amendment and I therefore decline to answer." This position, taken at the Committee

<sup>3</sup> *Watkins v. United States*, *supra*.

<sup>4</sup> *Sweezy v. New Hampshire*, 354 U. S. 234, 77 S. Ct. 1203, 1 L. Ed. 2d 1311.

<sup>5</sup> *Koenigsberg v. State Bar of California*, 353 U. S. 252, 77 S. Ct. 722, 1 L. Ed. 2d 810, reh. den. 354 U. S. 927, 77 S. Ct. 1374, 1 L. Ed. 2d 1441.

hearing is renewed here. It is apparent that the appellant misconceived the effect of the Watkins case. That this is so is clearly demonstrated by the opinion in the Barenblatt case from which we quote these excerpts:

"Undeniably the First Amendment in some circumstances protects an individual from being compelled to disclose his associational relationships. However, the protections of the First Amendment, unlike a proper claim of the privilege against self-incrimination under the Fifth Amendment, do not afford a witness the right to resist inquiry in all circumstances. When First Amendment rights are asserted to bar governmental interrogation resolution of the issue always involves a balancing by the courts of the competing private and public interests at stake in the particular circumstances shown. . . .

"That Congress has wide power to legislate in the field of Communist activity in this Country, and to conduct appropriate investigations in aid thereof, is hardly debatable. The existence of such power has never been questioned by this Court, and it is sufficient to say, without particularization, that Congress has enacted or considered in this field a wide range of legislative measures, not a few of which have stemmed from recommendations of the very Committee whose actions have been drawn in question here. In the last analysis this power rests on the right of self-preservation, 'the ultimate value of any society', *Dennis v. United States*, 341 U. S. 494, 509. Justification for its exercise in turn rests on the long and widely accepted view that the tenets of the Communist Party include the ultimate overthrow of the Government of the United States by force and violence, a view which has been given formal expression by the Congress.

"We conclude that the balance between the individual and the governmental interests here at stake must be struck in favor of the latter, and that therefore the provisions of the First Amendment have not been offended." 360 U. S. 109, 126, 127-128, 134.

The foregoing principles are applicable and controlling here. The First Amendment does not give to the appellant any right to refuse to answer the questions which were propounded to him by the Committee.

The district court decided that the questions upon which the indictments were framed were pertinent and so instructed the jury. The appellant, at the close of the trial, objected and made the contention that the pertinency issues should have been submitted to the jury. The same contention is urged on this appeal. We have no doubt but that this question is one of law and was rightly resolved at the trial. *Sinclair v. United States*, 279 U. S. 263, 49 S. Ct. 268, 73 L. Ed. 692.

Before this Court the appellant says his conviction must be reversed because, after he had made his objections to the questions put to him, he was not expressly directed to answer the questions. After the question on which the first count of the indictment was asked, the appellant said "Again, the first amendment; same grounds, sir. Do I have to repeat it each time, or is it understood each time?" The Chairman replied that "It is understood that you are referring to the first amendment." The Staff Director suggested that if there was to be an understanding as to the basis for refusing to answer, there might also be an understanding as to directions to the appellant to answer. The Chairman asked the appellant if he understood that he was ordered to answer and the appellant replied, "I will understand that you are directing me to answer each question in order to expedite the matter so we will not be wasting the Committee's time and everybody else's time on this." Later the Staff Director inquired whether the record was clear.

that in response to each refusal to answer there had been given a direction to answer, and the appellant said, "I understand. My counsel and I understand." The appellant waived the right to have a specific direction to answer each of the questions to which he made objection and which he refused to answer. He now asserts that he could not waive the requirement of being specifically directed to answer each question. It is required that the witness be ordered to answer a question, where an objection has been made or a refusal to answer has been stated. This requirement is made so that it may be established beyond doubt, in a criminal prosecution, that the refusal was intentional and deliberate. The statements of the appellant clearly showed that he and his counsel were fully informed and the request to omit the specific directions to answer was intelligently made by the appellant. He was in no way prejudiced. Due process was in no way denied. If the waiver had been made at a trial before a court we are without doubt that no assignment of error could properly be predicated upon permitting the waiver. *Smith v. United States*, 5th Cir. 1956, 234 F. 2d 385; *Beeler v. United States*, 5th Cir. 1953, 205 F. 2d 454, cert. den. 346 U. S. 877, 74 S. Ct. 130, 98 L. Ed. 385; *Hagans v. United States*, 5th Cir. 1959, 261 F. 2d 924. We see no interest of justice that calls for a different rule here. It might, though, be observed that the First Count upon which the appellant was convicted was for refusal to answer a question after being expressly ordered to give an answer. It follows, as has been stated, that if the conviction on the First Count is upheld there will be an affirmance in view of the concurrent sentences imposed.

The appellant now urges that when he appeared before the Committee the rules as announced in the Watkins opinion justified his belief that the First Amendment protected him in refusing to answer the questions of the Committee; and being so justified he did not have the criminal intent necessary to sustain a conviction for contempt. The offense is the willful refusal to comply with the order

of the Committee to answer a pertinent question. The mistaken belief that the law justifies a refusal to answer is not a defense, whether the belief is induced by the misreading of a judicial opinion, by the advice of counsel or otherwise. *Sinclair v. United States, supra.*

The appellant would have us hold that the indictment should have specified the pertinency of each question and would have us reverse his conviction for insufficiency of the indictment. A comparison of the indictment here with that by which Barenblatt was charged will show the lack of merit in this contention. Cf. *Barenblatt v. United States*, D. C. Cir. 1957, 100 App. D. C. 13, 240 F. 2d 875, 877. The appellant also urges that the trial court should have ordered a full response to the requests in the motion for a bill of particulars. We think that the appellant, if he regarded the bill of particulars as inadequate, should have said so in an appropriate manner before going to trial. But aside from that, we think there would have been no error if the court had expressly denied the request contained in the motion. The purpose of a bill of particulars is either to supplement the indictment in informing a defendant of facts constituting ingredients of the offense with which he is charged in order that he may prepare his defense or so to perfect the record as to bar a subsequent prosecution. 4 Wharton, Criminal Law and Procedure 720, § 1867. Pertinency being, as has been shown, a matter of law, the manner in which the questions propounded are pertinent to the inquiry are not proper matters for a bill of particulars. *Rose v. United States*, 9th Cir. 1945, 149 F. 2d 755. It cannot be well contended that the appellant could have been twice tried for the offenses charged in the indictment. We cannot see, and the appellant does not advise us, how the preparation of his defense would have been helped by any information he sought by the second part of his Motion for a Bill of Particulars. The absence of any order directing the furnishing of any further bill of particulars was not error. *Wong Tai v. United States*, 273 U. S. 77, 47 S. Ct.

300, 71 L. Ed. 545; *Kaufman v. United States*, 6th Cir. 1947, 163 F. 2d 404, cert. den. 333 U. S. 857, 68 S. Ct. 726, 92 L. Ed. 1137, reh. den. 333 U. S. 878, 68 S. Ct. 896, 92 L. Ed. 1154. Cf. *Watts v. United States*, 5th Cir. 1947, 161 F. 2d 511, cert. den. 332 U. S. 769, 68 S. Ct. 81, 92 L. Ed. 354.

Finally, the appellant took and takes the position that the Congress had no power to authorize the Committee investigations and that its Rule XI<sup>6</sup> under which the investigation here challenged was conducted was so vague and ambiguous that it could have no constitutional validity. This contention has also been put at rest by the Supreme Court in the *Barenblatt* decision. In the opinion, after reviewing the history of the Committee, the Court held:

"In this framework of the Committee's history we must conclude that its legislative authority to conduct the inquiry presently under consideration is unassailable, and that independently of whatever bearing the broad scope of Rule XI may have on the issue of 'pertinency' in a given investigation into Communist activities, as in *Watkins*, the Rule cannot be said to be constitutionally infirm on the score of vagueness." 360 U. S. 109, 122-123.

The quoted language is applicable here and the principle stated forecloses the appellant's contention.

We do not find any error in the judgment and sentence or in the proceedings culminating therein. The judgment and sentence are **AFFIRMED**.

<sup>6</sup> "The Committee on Un-American Activities, as a whole or by subcommittee, is authorized to make from time to time investigations of (1) the extent, character, and objects of un-American propaganda activities in the United States, (2) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and (3) all other questions in relation thereto that would aid Congress in any necessary remedial legislation." H. Res. 5, 83d Cong., 1st Sess.; H. Res. 7, 86th Cong., 1st Sess.

**Appendix B**

(JUDGMENT)

Extract from the Minutes of December 10, 1959

No. 17705

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CARL BRADEN,

*versus*

UNITED STATES OF AMERICA.

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This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Georgia, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment and sentence of the District Court in this cause be, and the same are hereby, affirmed.

## Appendix C

The statutory provisions involved read in relevant part:

2 U. S. C. Section 192, R. S. 102 (52 Stat. 942), as amended is as follows:

### "Refusal of witness to testify

"Every person who having been summoned as a witness by the authority of either House or Congress to give testimony or to produce papers upon any matter under inquiry before either House, or any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or any committee of either House of Congress, willfully makes default, or who having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than \$1,000 nor less than \$100 and imprisonment in a common jail for not less than one month or more than twelve months."

Public Law 601, Section 121, 79th Congress, 2d Session (60 Stat. 828) and House Resolution 5 of the 85th Congress:

"(b) Rule XI of the Rules of the House of Representatives is amended to read as follows:

### "RULE XI

#### "*Power and Duties of Committees*

"(1) All proposed legislation, messages, petitions, memorials, and other matters related to the subjects listed under the standing committees named below shall be referred to such committees, respectively \* \* \* .

"(q)(1) Committee on Un-American Activities.

"(A) Un-American Activities.

"(2) The Committee on Un-American Activities, as a whole or by subcommittee, is authorized to make from time to time investigations of (i) the extent, character, and objects of un-American propaganda activities in the United States, (ii) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and (iii) all other questions in relation thereto that would aid Congress in any necessary remedial legislation."

Rule 7 of the Federal Rules of Criminal Procedure reads in relevant part:

"Rule 7. The indictment and the Information.

(c) NATURE AND CONTENTS. The indictment or the information shall be a plain, concise and definite written statement of the essential facts constituting the offense charged. \* \* \*

(f) BILL OF PARTICULARS. The court for cause may direct the filing of a bill of particulars. \* \* \*